STATE OF MICHIGAN

IN THE SUPREME COURT

MARK TODD TWICHEL, Personal Representative of the Estate of BRADY S. SIES, Deceased,

Plaintiff-Appellee

vs.

MIC GENERAL INSURANCE CORPORATION,

Defendant-Appellant

Supreme Court Docket No. 121822

Court of Appeals Docket No. 228363

Lower Court Case No. 99-65692-NI
Honorable Archie L. Hayman

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121822

PLAINTIFF-APPELLEE'S BRIEF IN OPPOSITION TO DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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TABLE OF CONTENTS

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INDEX OF AUTHORITIES

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COUNTER STATEMENT OF QUESTIONS INVOLVED

Is the estate of the Decedent entitled to recover Personal Injury Protection Benefits from the Defendant-Appellant, where the Decedent was a resident relative of Elmer and Betty Sies, Decedent's grandparents, who had a policy of insurance with Defendant-Appellant, and where Decedent was not an owner of the vehicle in question under either the Michigan No Fault Act or Motor Vehicle Code?

Trial Court Answered: Yes

Court of Appeals Answered: Yes

Plaintiff-Appellee Answers: Yes

Defendant-Appellant Answers: No.

Is the Decedent's Estate entitled to recover uninsured motorist benefits from the Defendant-Appellant, where the Decedent was a resident relative of Elmer and Betty Sies, Decedent's grandparents, who had a policy of insurance with Defendant-Appellant, and where Decedent was not an owner of the motor vehicle in question as that term is used in the Defendant's policy of insurance?

Trial Court Answered: Yes

Court of Appeals Answered: Yes

Plaintiff-Appellee Answers: Yes

Defendant-Appellant Answers: No.

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COUNTER-STATEMENT OF FACTS

This is Defendant-Appellant's Application for Leave to Appeal following a grant of Summary Disposition in favor of the Plaintiff-Appellee at the Trial Court level and an Opinion from the Court of Appeals affirming the decision of the Lower Court.

The claims brought on behalf of the Estate of Brady Sies arise out of an automobile accident which occurred on November 17, 1998. On that date Plaintiff's decedent was killed when he struck a disabled vehicle as he traveled northbound on Jennings Road near the intersection of Pasadena Avenue in Flint, Michigan. The disabled vehicle did not have its headlights, taillights, or emergency flashers in use when the accident occurred. Neither vehicle was insured on the date of the accident.

Although the vehicle being driven by Plaintiff's decedent was not insured on the date of the accident, a claim for first party no fault benefits pursuant to MCL 500.3101 et seq., MSA 24.1301 et seq., as well as Notice of an Uninsured Motorist Claim were submitted to Defendant MIC, because he was not an owner of the vehicle involved in the accident. Defendant MIC insured Plaintiff's Decedent's grandparents, Elmer and Betty Sies, with whom Plaintiff's Decedent resided on the date of the accident.

Plaintiff's Decedent was driving a red S-10 pickup truck at the time of the fatal accident. He had recently agreed to purchase the red S-10 from his friend, Matt Roach, on November 12, 1998, for the purchase price of $600.00 (Exhibit A, paragraph 2). An initial payment of $300.00 was made on November 12, 1998, at which time Plaintiff's decedent took possession of the vehicle (Exhibit A, paragraphs 2, 3). Title to the vehicle was not transferred on this date, however, as Mr. Roach decided to hold the title

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until the full purchase price had been paid (Exhibit A, paragraph 3). In addition to the fact that Brady Sies did not have title to the vehicle when the accident occurred, it is also evident that he was not an owner of the vehicle as that term is defined under the Motor Vehicle Code, MCL 257.37; MSA 9.1837, the No Fault Act, MCL 500.3101(2)(g); MSA 24.13101(2) or the applicable policy of insurance issued by Defendant MIC.

Despite the fact that Brady Sies did not fit any of the definitions of ownership as set forth above, the benefits and coverages sought by Plaintiff's Decedent's dependents, including Brady Sies' unborn child, and his estate were denied by the Defendant based upon its position that Brady Sies was the owner of the 1988 GMC red S-10 pickup truck involved in the accident which ultimately lead to his death (Exhibit B). As such, a Complaint for declaratory relief against Defendant MIC General Insurance Corporation followed. Plaintiff and Defendant then filed Cross-Motions for Summary Disposition pursuant to MCR 2.116(C)(10). The Lower Court granted Plaintiff's Motion and denied Defendant's Motion in an Order dated June 20, 2000 (Exhibit C). Defendant MIC then filed its Claim of Appeal under date of July 5, 2000. As noted above, the Court of Appeals affirmed the decision of the lower Court. The Court of Appeals Opinion is attached as Exhibit D.

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ARGUMENT

Introduction

The Trial Court and the Court of Appeals have both determined that Plaintiff's decedent, Brady Sies, was not an owner of the 1988 red S-10 pick-up truck involved in the fatal accident of November 17, 1998. As such, the Decedent's dependents are entitled to no-fault benefits pursuant to MCL 500.3101 et seq.; MSA 24.13101 et seq., and the Decedent's estate is entitled to arbitrate the Uninsured Motorist claim pursuant to the terms of the subject policy. In support of Plaintiff's position, Plaintiff attaches the deposition testimony of Matt Roach (Exhibit E), Emily Slater (Exhibit F), Betty Sies (Exhibit G), and Rose Sies (Exhibit H). The Affidavit of Matt Roach has previously been attached as Exhibit A.

I. Plaintiff's Decedent Was Not an Owner, as That Term is Defined, Under Either the No Fault Act or the Motor Vehicle Code.

Under Michigan's No Fault Act, an owner is defined as follows:

> "(g) 'owner' means any of the following:
>
> (i) A person renting a motor vehicle or having the use thereof under a lease or otherwise for a period that is greater than 30 days.
>
> (ii) A person who holds the legal title to a vehicle other than a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.
>
> (iii) A person who had immediate right of possession of a motor vehicle under an installment sale contract."

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An "owner" is defined under the Motor Vehicle Code as:

> "(a) Any person, firm, association or corporation renting a motor vehicle or having the exclusive use thereof, whether a lease or otherwise, for a period that is greater than 30 days.
>
> (b) Except as otherwise provided in Section 401a, a person who holds the legal title of a vehicle.
>
> (c) A person who has the immediate right of possession of a vehicle under an installment sale contract. MCL 257.37; MSA 9.1837.

The definition of "owner" under the No-Fault Act, MCL 500.3101(2)(g); MSA 24.13101(2) as well as the Motor Vehicle Code, MCL 257.37; MSA 9.1837, is almost identical. Under either definition it is evident that Plaintiff's decedent was not an owner at the time of the fatal accident. The Decedent did not have possession or control of the motor vehicle for a period greater than 30 days when the accident occurred; he did not have legal title to the vehicle; and he did not have immediate right of possession of the motor vehicle under an installment sale contract.

A. <u>Mr. Sies Did Not Have Exclusive Use of the Vehicle for 30 Days</u>

One method for establishing ownership under the statutes is to show that an individual has used a motor vehicle for a period greater than 30 days. Matt Roach, at pages 8-9 of his deposition, as well as in the Affidavit attached as Exhibit A, clearly testified that Plaintiff's decedent took possession of the vehicle on November 12, 1998, just five days before the fatal accident (Exhibit A, paragraph 3; Exhibit E, pages 8-9). Similarly, Plaintiff's decedent's girlfriend at the time of the accident, Emily Slater, testified that Mr. Sies had the car for approximately one week before the accident (Exhibit F, page 19). Lastly, Plaintiff's decedent's grandmother, Betty Sies, indicated

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that the decedent only had the vehicle for "a week or two" prior to the accident (Exhibit G, page 18). Clearly, the testimony of all of the witnesses involved evidence the fact that Brady Sies did not have use of this vehicle for a period in excess of 30 days before this accident.

Despite this evidence and the clear language of the applicable statutes, however, Defendant contends that Plaintiff's decedent was an owner under the 30 day provision, arguing that he had the right to exclusive use of the vehicle for 30 days, citing Ringewold v Bos, 200 Mich App 131 (1993) in support of its position. Initially, Plaintiff notes that Mr. Roach had a right to the vehicle, because he still had title. This fact alone defeats Defendant's position that Mr. Sies had the right to exclusive use.

Moreover, as the Court of Appeals stated in its opinion attached as Exhibit D, the Ringewold Court "narrowed its decision to the facts of the case and pointedly noted that the case was brought under the Owners Liability Statute, the purpose of which is to place liability on the person who had ultimate control of the vehicle. In contrast, the basic goal of Michigan's No Fault Insurance system 'is to insure persons injured in motor vehicle accidents of 'assured, adequate and prompt reparation' for certain economic losses.' " (Exhibit D, page 4, citing Travelers Insurance v. Uhaul of Michigan, Inc., 235 Mich App 273, 282; 597 NW 2d 235 (1999) (emphasis omitted)). The Court of Appeals went on to state that "because these statutes have different purposes, it is not unreasonable to construe their similar language in a different manner, under different factual circumstances." (Exhibit D, page 4).

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Plaintiff further submits that Ringewold constitutes a very narrow decision with very specific facts and can be easily distinguished from the facts of this case, a proposition with which the Court of Appeals agreed.[1] In Ringewold, the Court sought to further "the Legislature's intention to place liability on the person who is ultimately in control of the vehicle under the Owner's Liability Section." Id. at 720. The Ringewold Court found that this intention would be furthered under the facts of that case for several reasons. Foremost among these reasons was Defendant's admission in deposition that she was the owner of the vehicle. Id. at 719. Moreover, the Court also pointed out that the entire purchase price for the vehicle had been paid. Id. at 718. The Court stated that "in as much as Defendant transferred license plates, insured the vehicle, and admitted that it was purchased in her name for her daughter's use, no question of fact exists regarding her status as an 'owner' under the Vehicle Code." Id.

In addition to the distinction that Ringewold involved a question under the Owner's Liability Statute and the current case does not, as noted above, Plaintiff also submits that all of the factors cited by the Ringewold Court in support of its decision to find ownership in that case are not present in the case at bar. Instantly, the Decedent never admitted that he was an owner of the vehicle. Moreover, he never transferred the plates and the vehicle was never insured by the Decedent. Lastly, Plaintiff's decedent had not paid the full purchase price of the vehicle at the time of the fatal accident. These factors, as well as the fact that Brady Sies did not have the right to

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[1] The Court will note Ringewold is not cited for the proposition set forth by the Defendant in any other case, and did not overrule Reddig, Infra.

exclusive use of the vehicle because Mr. Roach still retained the title to the vehicle, clearly distinguish this case from Ringewold.

In further support of this position, Plaintiff cites Michigan Automobile Insurance Co v. Reddig, 128 Mich App 631 (1983). In the Reddig case, there was an agreement to purchase a vehicle for $100.00. A $60.00 advance had been paid on the car, at which time it was delivered to the buyer. There was not, however, a transfer of the certificate of title at the time the car was delivered to the buyer. The Reddig Court held that:

> "[The seller] did not properly transfer the certificate of title before the date of the accident. The sale to [the buyer] was, therefore void and [the seller] remained the owner."

While Reddig was decided under a prior version of MCL 257.37, the 30 day exclusive use provision was in effect at that time, as well. The prior version read:

> " 'Owner' means:
>
> a. Any person, firm, association or corporation renting a motor vehicle or having the exclusive use thereof, whether a lease or otherwise, for a period of greater than 30 days."

The Court will note that both the former and current version of MCL 257.37 encompassed the "exclusive use" language. That is to say, even though the Reddig Court considered a different version of MCL 257.37, the language of that prior version is exactly the same as the current version with regard to "exclusive use" of a motor vehicle for a period of greater than 30 days. The Reddig Court did not base its decision on the "exclusive use" language of the Motor Vehicle Code because the vehicle had not

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been used exclusively for a period greater than 30 days. As such, exclusive use of the vehicle in Reddig was a non-issue, just as it is in the case at bar. Instead, the Reddig Court focused on whether or not title had actually transferred. Reddig, at 631.

The Reddig Court decided that case interpreting language under the Motor Vehicle Code. The same language the Defendant now attempts to use to establish that Brady Sies was an owner of the vehicle in the case at bar was available to the Reddig Court, however, was not considered because it had absolutely no applicability to deciding the question of ownership in that case. Because the present case also involves a question under the Motor Vehicle Code and has facts similar to those present in Reddig, it is evident that the "right to exclusive use" argument made by the Defendant is without merit. Clearly, the situation in Reddig is analogous to the case at bar and warrants a finding that Plaintiff's decedent was not an owner of the subject vehicle at the time of the fatal accident under the 30 day provisions contained in either the No Fault Act or the Motor Vehicle Code.

B. Mr. Sies Did Not Have Title to the Vehicle

The second method for establishing ownership is to demonstrate that a person has title to the vehicle under MCL 500.3101(g)(ii), or MCL 257.37(b). In that regard, the Affidavit of Matt Roach, as well as his deposition testimony, clearly indicates that title was not transferred to Plaintiff's decedent before the accident. An initial $300.00 down payment was made to Mr. Roach on November 12, 1998, but title was not to be transferred until the final payment was made (Exhibit A, paragraph 3; Exhibit E, page 9).

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The fact that title and consequent ownership had not transferred as of the date of the accident is further supported by the deposition testimony of Rose Sies. Ms. Sies stated that she became aware that Matt Roach was still owed money on the vehicle after a conversation with a mutual friend, Aaron Disberry (Exhibit H, page 23). Ms. Sies further stated that she gave $200.00 to Mr. Disberry to give to Mr. Roach for final payment on the vehicle (Exhibit H, pages 24-25). While Mr. Roach remembers receiving the money directly from Ms. Sies, there is no discrepancy between the two that the additional $200.00 was given to Mr. Roach *after* the accident (Exhibit E, pages 10-11).

In further support of Plaintiff's position with regard to the question of ownership under MCL 500.3101(2)(g)(ii), and MCL 257.37(b) Plaintiff notes several decisions where the possessor of an automobile was not deemed to be the owner when an effective transfer of title was not consummated. See Messer v. Averill, 28 Mich App 62 (1970); Basqall v. Kovach, 156 Mich App 323 (1986); Allstate Insurance Co. v. Demps, 133 Mich App 168 (1984); Michigan Mutual Automobile Insurance Co. v. Reddig, Supra.

C. Mr. Sies Did Not Have Immediate Right of Possession of the Vehicle Under an Installment Sale Contract

The last method of demonstrating ownership is to show that a person has immediate right of possession of a vehicle under an installment sale contract, MCL 500.3101(g)(iii); MCL 257.37(c). Defendant argues that Plaintiff's Decedent was an owner because he had the immediate right to possession of the vehicle under an

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installment sale contract at the time he was injured. The Defendant contends that because the No-Fault law does not define the word "installment", the term should be given its "general dictionary definition". The Defendant proceeds to define the term "installment" as it is set forth in the *Merriam Webster's Collegiate Dictionary, 10th Edition:* "one of the parts into which a debt is divided when payment is made at intervals".

With respect to Defendant's position, Plaintiff notes that "there are certainly cases arising under the No-Fault Act in which this Court will look to the Vehicle Code for guidance in determining the meaning of a term used in the No-Fault Act or in an insurance policy." Auto-Owners Insurance Co. v. Hoadley, 201 Mich App 555, 560 (1993), citing Stanke v. State Farm Mutual Automobile Insurance Co, 200 Mich App 307 (1993). Because the term "installment sale contract" is not defined under the No-Fault Act, or the Vehicle Code, Plaintiff submits that the Court should look elsewhere for a definition of this term. In that regard, Plaintiff cites MCL 492.102, Paragraph 9, which states that " a 'installment sales contract' or 'contract' means a contract for the retail sale of a motor vehicle . . . " (emphasis added). Clearly, this was not a retail sale of a motor vehicle. Moreover, Mr. Roach cannot be considered an "installment seller," which is defined under Section 492.102 as follows:

> "A person engaged in the business of selling, offering for sale, hiring or leasing motor vehicles under installment sale contracts or a legal successor in interest to that person. As used in this subdivision, 'business' does not include an isolated sale." (emphasis added).

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Finally, this transaction was not in writing and was not signed by both the buyer and the seller, as required under MCL 492.112(a). This was simply a one-time transaction between two private individuals to buy a vehicle. Part of the purchase price was paid, with title to transfer upon receipt of the final payment. The Defendant attempts to characterize this simple transaction as an installment sale in order to avoid its duties under the contract of insurance. In doing so, the Defendant sets forth the general dictionary definition of the word "installment". When one looks to *Blacks Law Dictionary, 6th Edition*, however, the term "installment sale" is defined as follows:

> "Commercial arrangement by which buyer makes initial down payment and signs a contract for payment of the balance in installments over a period of time." (emphasis added).

Blacks also defines the term "installment contract". Under this definition, reference is made to UCC Section 2-612. Obviously, an installment contract or an installment sale are considered in a commercial or retail context. The term "installment sale contract" is a term of art with specific meaning. Thus, if the Court chooses not to read the No-Fault Act in *peri materia* with the Motor Vehicle Sales Finance Act, Plaintiff submits the plain and ordinary meaning of "installment sale contract" is as that term is defined in *Blacks Law Dictionary*.

None of the instances of ownership set forth in the No Fault Act or Motor Vehicle Code are met with regard to the situation currently before the Court. As such, it is clear that Plaintiff's decedent was not an owner as that term is defined in either MCL 500.3101(2) or MCL 257.37.

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II. Plaintiff's Decedent Was Not An Owner As That Term Is Used In The Policy Of Insurance Written By Defendant MIC

Defendant MIC next argues that Plaintiff's decedent was an owner of the motor vehicle in question, as that term is used in the uninsured motorist language contained within the policy of insurance. The Defendant does not contest that Brady Sies was qualified as an insured for uninsured motorist benefits under the policy of insurance (Appellant's Brief, page 22), but is asserting that Brady Sies was excluded from coverage under the "owned vehicle exclusion" contained in the policy. The answer to this question turns, once again, on whether Brady Sies was an "owner" as that term is used in the policy of insurance.

Where a term is not clearly defined in a policy of insurance, it is to be given its commonly used meaning, in context. Henderson v. State Farm & Casualty Co., 460 Mich 348, 354, 596 NW 2d, 190 (1999). In assigning the "commonly used meaning" of a term, the Court **may** refer to dictionary definitions when appropriate when ascertaining the precise meaning of a particular term. Popma v. Auto Club Insurance Association, 446 Mich 460, 470, 521 NW 2d, 831 (1994) (emphasis added). In addition to these rules of contract construction, Plaintiff notes that an insurance contract is ambiguous if, after reading the entire contract, its language can be reasonably understood in differing ways. Bianchi v. Automobile Club of Michigan, 437 Mich 65, 70, 467 NW 2d, 17 (1991). Any ambiguities are to be construed against the insurer, who is the drafter of the contract. State Farm Mutual Automobile Insurance Co. v. Enterprise Leasing Co., 452 Mich 25, 38, 549 NW 2d, 345 (1996). Finally, exclusionary clauses

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are to be strictly construed in favor of the insured. Auto Owners Insurance Co. v. Churchman, 440 Mich 560, 567, 489 NW 2d, 431 (1992).

Based upon these rules of construction, it is apparent that the term "owner" is, at the very least, ambiguous as it is used in the policy of insurance at issue. The Defendant argues that "the most common definition of own is to possess or control" (Appellants Brief, pg. 25). It cites cases which sought dictionary definitions of the terms "motorcycle," "work" and "explode" as a basis for seeking a dictionary definition of "owner". Of course, the court **may** refer to a dictionary in determining the commonly used meaning of a word. Popma, Supra. By implication, however, the Court **may** also refer to other sources in making this determination. In that regard, Plaintiff points out that reasonable definitions of the term "owner" are set forth in the No Fault Act and Motor Vehicle Code. As noted earlier, the Plaintiff does not fall within any of the instances of ownership as defined in either of those statutes. Plaintiff's position that either the No Fault Act or the Motor Vehicle Code be used in defining the term "owner" is clearly reasonable. As such, Plaintiff contends that the policy is ambiguous.

In Raska v. Farm Bureau Mutual Insurance Co., 412 Mich 355, 362, 314 NW 2d, 440 (1982), the Supreme Court held:

> "A contract is said to be ambiguous when its words may reasonably be understood in different ways.
>
> If a fair reading of the entire contract of insurance leads one to understand that there is coverage under particular circumstances and another fair reading of it leads one to understand there is no coverage under the same circumstances the contract is ambiguous and should be construed against its drafter and in favor of coverage."

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Plaintiff submits that his interpretation of the term "owner" is reasonable. As such, an ambiguity exists and Plaintiff's decedent's estate should be afforded coverage under the policy of insurance.

If the Court is inclined to seek a dictionary definition in determining whether or not benefits should be afforded, Plaintiff submits that it should look to the definition provided in the *Webster's Encyclopedic Unabridged Dictionary of the English Language, Deluxe Edition (1994)*. In that dictionary the term "owner" is defined as "a person who owns; proprietor." The term "own" is then defined in numerous ways, including:

> "To acknowledge as one's own; recognize as having **full** claim, authority, power, dominion, etc." (emphasis added).

Clearly, Plaintiff's decedent did not have "**full** claim, authority, power or dominion" over the 1988 red GMC pickup. As noted previously, Mr. Roach retained title to the vehicle and could have, at any time, claimed ownership of the vehicle by presenting the title and taking the vehicle from Plaintiff's decedent. Thus, under the definition provided by the Plaintiff, it is evident that there is another reasonable dictionary interpretation of what it means to own something. Defendant's definition is that to own something is to "possess or control it." While Plaintiff does not agree that this is a reasonable interpretation of the term, it is clear that different, reasonable dictionary definitions of the term exist. As such, even accepting Defendant's definition of the term, it is apparent that an ambiguity exists and coverage should be strictly construed in favor of the insured. Raska, Supra.

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CONCLUSION

The only manner in which the Defendants can deny the benefits and coverages sought in Plaintiff's Complaint for Declaratory Judgment is to establish that Plaintiff's decedent was an owner of the automobile involved in the fatal accident of November 17, 1998. Clearly, Plaintiff's decedent does not fall within the definition of ownership set forth in either of the statutes listed above. Secondly, Plaintiff has set forth a reasonable definition of the term "owner," as it is used in the policy written by the Defendant. As such, an ambiguity exists and coverage for uninsured motorist benefits should be afforded. Because Plaintiff's decedent cannot be defined as an owner of the automobile involved in the accident, Summary Disposition in favor of Plaintiff was appropriate and the Trial Court and Court of Appeals decisions should not be disturbed.

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RELIEF REQUESTED

Plaintiff requests this Court to enter an Order Denying Defendant-Appellant's Application for Leave to Appeal, thereby affirming that Plaintiff's decedent, Brady Sies, was an insured under the subject MIC General Insurance Corporation automobile insurance policy, that his dependents are entitled to first party no fault benefits pursuant to MCL 500.3101 et seq., that his estate is entitled to uninsured motorist benefits pursuant to the terms of the subject policy, and that Plaintiff is entitled to pursue each of these benefits, and all of them, as set forth in the "Agreement to Arbitrate Claim for Insurance Benefits," attached as Exhibit I.

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